

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of MERCEDNET, INC. for authority to terminate service, withdraw its tariff, and surrender its Certificate of Public Convenience and Necessity. (U 6533 C)

Application 05-01-001  
(Filed January 3, 2005)

**OPINION GRANTING THE REQUEST OF MERCEDNET, INC. TO  
TERMINATE SERVICE, WITHDRAW ITS TARIFFS, AND SURRENDER  
ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY****Summary**

This decision grants the unopposed application of MercedNet, Inc., (Applicant) for authority to terminate its competitive local exchange (CLEC) service, withdraw its CLEC tariffs, and to surrender its certificate of public convenience and necessity (CPCN).<sup>1</sup> As a result of this decision, Applicant will no longer provide CLEC service to customers in the Merced area. Applicant's remaining customers have transferred their service to another telecommunication carrier.

**Background**

In Decision (D.) 01-05-081, we granted Applicant a CPCN which authorized Applicant to provide limited facilities-based and resold local

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<sup>1</sup> Applicant has also filed an advice letter, which requests Commission approval of Applicant's surrender of its CPCN authorizing the provision of interexchange services, with the Commission Telecommunications Division. We will not address the advice letter here.

exchange services in the service territories of Pacific Bell Telephone Company and Verizon California Inc. Applicant subsequently obtained a CPCN to operate as a facilities-based carrier of Inter-Local Access and Transport Area (LATA) and intra-LATA services as authorized by Commission decisions.<sup>2</sup>

Under this operating authority, Applicant has been providing local exchange and interexchange telecommunications services to customers in the Merced area.

Applicant requests authorization to terminate its CLEC service, withdraw its associated tariffs and surrender its CPCN authorizing the provision of local exchange services because Ensemble Communications, which manufactures the LMDS equipment used by Applicant to provide service, has ceased its manufacture and support of this equipment. Applicant states that it therefore has no vendor support or source of any replacement parts for its LMDS equipment and that the only alternative is to replace the LMDS equipment with landline facilities, which would be extremely time-consuming and expensive. Applicant's financial statements, filed under seal, show that Applicant is operating at a loss. Applicant states that in view of its financial condition, replacement of the LMDS equipment with landline facilities is not a realistic option.

### **Discussion**

We authorize Applicant to surrender its CPCN authorizing the provision of local exchange services as a CLEC and to discontinue providing these services to customers in California. Applicant may also withdraw its associated tariffs.

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<sup>2</sup> Applicant's CPCN # is U 6533 C.

Under General Order (GO) 96-A Section XIV, a carrier must obtain approval from the Commission before withdrawing services. D.97-06-096 imposes notice requirements on carriers seeking to withdraw service.<sup>3</sup> Applicant has demonstrated that it has satisfied these requirements through its January 5, 2005 written notice to its customers. Applicant states that all of its remaining customers have now transferred their service to another telecommunications carrier. Based on Applicant's financial condition and difficulties in obtaining equipment and service for its equipment in the future, we find it reasonable to grant Applicant's request to discontinue service and to surrender its CPCN.<sup>4</sup>

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<sup>3</sup> Customers are entitled to receive adequate notice and to be fully informed of their options when their telecommunications carrier seeks to discontinue services. As a result, under D.96-06-096, a telecommunications carrier seeking to withdraw from a market and transfer remaining customers to Incumbent Local Exchange Carriers (ILECs), must provide customers with a notice that meets the following requirements:

- a) The notice must be in writing;
- b) The carrier must provide it to customers no later than 30 days before the proposed transfer;
- c) The notice must contain a straightforward description of the upcoming transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free phone number of questions; and
- d) The notice must state that Commission authorization is required before the carrier may discontinue service to customers.

The notice and the carrier's description of service to customers must be included in the advice letter.

*See D.02-03-011.*

<sup>4</sup> Applicant is a carrier competing with the ILEC and any other CLECs offering service in the Merced area. In order to ensure that a minimum level of affordable telecommunications services are available to all persons in California, each ILEC has

*Footnote continued on next page*

**Motion to File Confidential Documents Under Seal**

Applicant has requested authorization to file its financial statements under seal on the grounds that public disclosure of this information would place Applicant at an unfair business advantage. We have granted similar motions in other cases, and we will do so here.

**Categorization and Need for Hearings**

Notice of the filing of the application appeared in the Commission's Daily Calendar on January 5, 2005. In Resolution ALJ 176-3145 dated January 13, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest or response has been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

**Comments on the Draft Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

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been designated as a "carrier of last resort" in its service area and must serve all persons who request service in the area. Since Applicant is not a carrier of last resort, Applicant is not obligated to continue to indefinitely serve customers when it wishes to exit the market. *Id.*

**Findings of Fact**

1. This Commission authorized Applicant to provide facilities-based and resold local exchange services in 2001 and interexchange telecommunications services in 2002.
2. Applicant seeks Commission approval of its request to surrender its CPCN authorizing the provision of local exchange services, to discontinue providing these services to customers, and to withdraw its tariffs.
3. Applicant has been serving customers in the Merced area.
4. Ensemble Communications, which manufactures and services the LMDS equipment used by Applicant to provide service, has notified Applicant that it will no longer be manufacturing or supporting LMDS equipment.
5. Applicant has no other vendor support or source of replacement parts for its LMDS service.
6. In order to continue to provide service, Applicant would need to replace the LMDS equipment with landline facilities, which would be very time-consuming and is not a realistic option in view of Applicant's financial condition.
7. Applicant has given advance written notice of the proposed termination of their service which meets the requirements of D.97-06-096 because the notices:  
a) were in writing; b) advised customers at least 30 days prior to the service termination date; c) directly explained the need for customers to select an alternative provider of their choice and stated that Applicant would pay any costs imposed by the new carrier for the transfer; d) provided a toll-free number for customer questions, and e) stated that the termination of service would not be effective without Commission approval of Applicant's request to terminate service.

8. No protest of the application has been filed.

**Conclusions of Law**

1. Under GO 96-A, Commission approval is required before a carrier may withdraw from the provision of public utility service.
2. Since Applicant is not a carrier of last resort, it is not legally obligated to continue to serve customers when it wishes to exit the market.
3. In view of Applicant's financial condition and future problems in obtaining replacement parts and services for its LMDS equipment, Applicant's request to surrender its CPCN and discontinue service is reasonable.
4. Since the matter is uncontested, the decision should be effective on the date it is signed.

**O R D E R**

**IT IS ORDERED** that:

1. The application of MercedNet, Inc. to for authority to terminate its competitive local exchange carrier (CLEC) service, to withdraw its associated tariffs, and to surrender its certificate of public convenience and necessity for CLEC service is granted.
2. Applicant shall send a written notice to each of its customers, which states that the Commission has approved the Applicant's termination of CLEC service and that if any customer has not chosen a new local exchange service provider, the customer will be transferred to the applicable carrier of last resort for that geographic area, within 30 days of this order.

3. Application 05-01-001 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.